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September 28, 2009

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. 4041 - Narragansett Electric Company d/b/a National Grid's ("National Grid") Standard Offer Procurement Plan and Renewable Energy Procurement Plan

Dear Ms. Massaro:

This office represents Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation") in the above-docketed proceeding. Please accept this letter (and 9 copies) on behalf of Constellation for filing in this proceeding, in order to clarify the record.

Division's Statements

On September 22, 2009, Constellation received an electronic service copy of the *Post-Hearing Brief of the Division of Public Utilities and Carriers*.¹ Therein, the Division states in a footnote that "profit margins on [Full Requirements Service ("FRS")] contracts are substantially greater than the margins on block products," and provides as support for the Division's statement the following citation to the Transcript: "8/27/2009 Tr. at 130." Later in the same footnote, the Division provides the following additional citations as apparent support for Division's notion that "block products" are "less profitable": "8/27/2009 Tr. at 104, 132." All three of these citations refer to portions of the Transcript dealing with *Constellation witnesses' responses and statements* during cross-examinations.

¹ *Post-Hearing Brief of the Division of Public Utilities and Carriers*, Division of Public Utilities and Carriers ("Division"), Public Utilities Commission ("PUC" or "Commission") Docket No. 4041 (filed Sept. 22, 2009) ("Division Brief").

Constellation's Concern

Constellation has carefully reviewed the Division Brief and the Transcript, particularly at and around the citation references that the Division provides, and has been unable to locate the statements in the record, attributable to Constellation, that purport to support the Division's statements in question. In fact, Constellation does not support Division's above statements, and makes that clear in the record of this proceeding.

Constellation is concerned by the incorrect citation and attribution of statements on relative profitability only because of the highly competitively-sensitive nature of the energy business and the proprietary nature of any statements, calculations or comparisons of profitability of various products, regardless of whether any such information is true or false. The release of information of this nature could not only negatively affect Constellation's competitiveness in the marketplace, as it would provide valuable information to potential counterparties, *but it may also raise antitrust concerns*. Such a disclosure may be construed in certain markets and under certain facts as causing violations of antitrust principles, as the provision of too much data regarding a market participant's business and valuation of products may promote anti-competitive behavior in the form of price-fixing or other acts of collusion, regardless of whether such outcomes were intended. Constellation makes clear that it made no statements at the Hearings in this proceeding that may raise such antitrust concerns.

Constellation's Actual Statements on the Record

For instance, Division Counsel specifically asks Constellation witness Allegretti, "Isn't it true that standard block products and spot market purchase in general do not possess the profit margins of the same magnitude as [FRS] products?" Mr. Allegretti responds, "No, that's not necessarily true." *Transcript* at pp.104 (line 22) – 105 (line 4).

With respect to Division Counsel's questions on the profitability of various products (*Transcript* pp.128 (line 24) – 130 (line 6)), Constellation witnesses Daniels and Allegretti state in cross-examination additionally only that:

- "[Constellation] would consider that proprietary information," *Transcript* at p.129 (lines 6-7);
- "[W]e've put a margin into a transaction that covers both profit and unexpected costs and it's really a look back exercise after the fact to determine what the ultimate profit margin was on a transaction," *Transcript* at pp.129 (line 22) – 130 (line 2); and
- "[A]s a general proposition I would say that full requirements service *is a higher value product* and one for which we would typically *charge more*," *Transcript* at p.130 (lines 3-6) (*emph. added*).

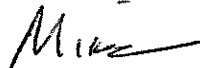
In this way, Constellation specifically (a) points out the sensitive nature of such information, (b) indicates that a comparison of forward-looking profitability is impossible as it depends on outcomes of market assumptions included in costs, and (c) states that it may *charge* more for a *higher value product*. Constellation does not state that higher charges for a higher value product will lead to higher profits; Profits/Loss = Revenue - Costs. This calculation is directly affected if the assumptions that go into Costs turn out to be incorrect.

Constellation's Request

Constellation asks only that the Commission and parties to this proceeding take notice that Constellation did not in fact make statements on the record comparing the relative profitability of FRS products versus block or other products.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc/tmg
cc: Service List